

ISSUE

The issue is whether appellant established disability for the period November 1, 2013 to April 25, 2014 due to her accepted July 14, 2003 employment injury.

On appeal counsel argues that appellant was entitled to wage-loss compensation as the employing establishment failed to provide appellant with a limited-duty job within her work restrictions.

FACTUAL HISTORY

On July 14, 2003 appellant, then a 34-year-old rehab city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her lower back while scanning packages. OWCP accepted the claim for lumbar strain and paid intermittent wage-loss compensation until December 2003 when appellant returned to full-time limited-duty employment. It accepted a recurrence of disability under this claim on January 12, 2004.

Appellant returned to work on June 20, 2005 for two hours, but was sent home. She worked for a private-sector employer from July 6 to October 31, 2005 and from November 4, 2005 to March 22, 2006 when she claimed a recurrence of disability due to her federal accepted injury. OWCP accepted a recurrence of disability from March 22 through December 16, 2006 when she returned to full-time limited-duty employment. Appellant stopped work again in August 10, 2007 and OWCP accepted a recurrence of disability from August 10 to December 5, 2007. She returned to work on December 4, 2007.

On May 20, 2008 appellant filed new claims for wage-loss compensation (Form CA-7) beginning April 9, 2008 and continuing due to her accepted work injury. By decision dated October 6, 2008, OWCP denied appellant's claim for a recurrence of disability for the periods April 9 to June 2, 2008.⁴ It later determined, based on medical evidence which found appellant able to work only four hours per day, that she had established disability for four hours per day from June 3 to July 7, 2008. As of July 8, 2008, however, appellant was released to return to limited duty for eight hours a day and she thereafter accepted the position of sales and services associate.

Appellant requested reconsideration of the October 6, 2008 decision. In a nonmerit decision, dated October 28, 2008, OWCP denied the reconsideration request without reviewing the merits of the claim.

On May 27, 2009 appellant again requested reconsideration and, after evaluating the merits of the claim, OWCP affirmed the October 6, 2008 denial of recurrence for the period April 9 to June 2, 2008.

⁴ Appellant had originally filed a claim for a recurrence of disability to include the period January 17 to April 8, 2008. That claim was denied as OWCP found it was for a period covered and previously denied under OWCP File No. xxxxxx657.

Appellant filed another claim for lower back pain on July 16, 2010, assigned OWCP File No. xxxxxx281. This claim was accepted for thoracic or lumbosacral radiculitis. Appellant received wage-loss compensation benefits intermittently until her compensation and medical benefits were terminated under that claim on October 31, 2013.

Appellant submitted medical reports and duty status reports (Form CA-17) from Dr. Babak Arvanaghi, a treating Board-certified anesthesiologist with a subspecialty certification in pain medicine, covering the period October 8, 2008 to October 1, 2013. The reports provided results on examination, noted diagnosed conditions of lumbar radiculopathy and spondylosis, fibromyalgia, stress fracture, anxiety and depression, and coccydynia, and provided work restrictions.

Appellant filed additional claims for wage-loss compensation (Form CA-7) on December 5, 2013 for the periods November 1 to December 5 and December 16 to 31, 2013, and January 1 to 31, 2014.

In reports dated November 19, 2013, January 28 and February 11, 2014, Dr. Arvanaghi reviewed appellant's history of work injury and provided examination findings. He noted that appellant complained of low back pain that was aggravated with sitting and which radiated into both feet. Diagnoses included myofascial pain, thoracic/lumbar radiculopathy, a broken coccyx, lumbar radicular pain, and facet hypertrophy. Dr. Arvanaghi cleared appellant to return to sedentary work, with limitations, but not to return to the carrier position.⁵

In the February 11, 2014 report, Dr. Arvanaghi noted that appellant had reportedly attempted to return to work with restrictions in 2010, but had a flare-up in October 2011 and had problems ever since. Appellant advised that she had been transferred to a carrier position in November 2012, which was outside her medical restrictions. Dr. Arvanaghi noted that the employing establishment had informed appellant at that time that it was unable to accommodate her work restrictions. He reported physical findings of weakness in the left upper extremity, tenderness on palpation of the bilateral paracervical musculature area, reduced left shoulder range of motion, normal cervical range of motion, bilateral lumbar paraspinal musculature tenderness, and limited lumbar extension, flexion, and facet loading maneuver. Dr. Arvanaghi again opined that appellant was disabled from performing a letter carrier position, but was capable of performing sedentary work with restrictions.

In a notice of recurrence of disability (Form CA-2a) dated February 10, 2014, appellant alleged a recurrence of disability beginning November 1, 2013 due to the employing establishment's failure to provide her with a job within her medical restrictions. She also filed claims for wage-loss compensation (Form CA-7) for the period November 1, 2013 through April 25, 2014.

⁵ OWCP was advised by a January 17, 2014 e-mail from the employing establishment that there was no work available within appellant's restrictions.

By decision dated March 19, 2014, OWCP accepted appellant's claim for a recurrence of disability beginning November 1, 2013 based on reports dated November 19, 2013 and February 11, 2014 from Dr. Arvanaghi.⁶

To determine whether appellant had any wage-loss capacity during the period November 1, 2013 through April 25, 2014, on April 18, 2014 OWCP referred appellant for a second opinion examination with Dr. Mohammad H. Zamani, a Board-certified orthopedic surgeon.

In reports dated April 22 and 29, 2014, Dr. Arvanaghi noted that his findings and opinion regarding appellant's disability and work capability were unchanged from prior reports.

In a May 7, 2014 report, Dr. Zamani, based upon a review of the medical evidence, employment injury history, statement of accepted facts, and physical examination, opined that appellant had sustained only a minor sprain due to the employment incident. A physical examination revealed full mobility and muscle strength, no lumbar spasm or tightness, and no tenderness over the thoracic region. Appellant complained of pain on palpation of the entire lumbar area and extreme movements of the back. Dr. Zamani reported an essentially normal orthopedic examination and the multiple magnetic resonance imaging (MRI) scans showed normal and age appropriate findings. He concluded that appellant had no residuals from the accepted employment injury and was capable of performing full-duty work with no restrictions. Dr. Zamani opined that appellant's objective findings did not correspond with her subjective complaints. He opined that appellant had sustained a sprained back with a full recovery. Dr. Zamani noted that there was no indication of disability from work since November 2013. "[Appellant] requires no further medical treatment in any form or any shape and again is capable of working and doing all activity as usual. [Her] subjective complaints do not correspond with objective findings."

By decision dated May 29, 2014, OWCP denied appellant's claims for wage-loss compensation, finding that the evidence of record was insufficient to establish disability for the period November 1, 2013 to April 25, 2014 due to the accepted July 14, 2003 employment injury. It found that Dr. Zamani's opinion constituted the weight of the medical opinion evidence.

Dr. Arvanaghi, in his May 27, 2014 report, reiterated his findings on examination from prior reports. He noted that appellant had returned to work as a letter carrier with restrictions. Dr. Arvanaghi noted that appellant's pain had significantly increased after working only two days. He noted that appellant would try to work, but that her restrictions might have to be modified.

By letter dated June 24, 2014, counsel requested a telephonic hearing before an OWCP hearing representative, which was held on February 10, 2015.

In a June 24, 2014 report, Dr. Arvanaghi provided examination findings and history of injury. He opined that appellant was capable of working limited duty with restrictions of no

⁶ OWCP mistakenly identified appellant's treating physician as Dr. Babak instead of Dr. Arvanaghi.

prolonged sitting, standing, or heavy lifting. Dr. Arvanaghi opined that appellant was capable of working with restrictions of no standing more than 20 minutes at one time and no standing more than 2 hours total in a 24-hour period. He opined that appellant's work restrictions were due to her accepted employment injuries. Dr. Arvanaghi advised, however, that, although appellant had been released to return to work, the employing establishment did not have a job available within her restrictions.

At the February 10, 2015 telephonic hearing appellant testified that she attempted to return to work around November 1, 2013, but the employing establishment told her that the only position available was full duty and there was no work available within her restrictions. She called the employing establishment in from November 2013 to March 2014 and was told there were no employment positions available within her work restrictions. Appellant testified that she had returned to a modified carrier position working 40 hours per week in April 2014.

In a March 23, 2015 report, Dr. Arvanaghi's physical findings and employment injury history details were unchanged from his prior reports. He reported that appellant had been approved for disability retirement and stopped working on February 20, 2015.

By decision dated April 27, 2015, OWCP's hearing representative affirmed the May 29, 2014 decision. It found that appellant had failed to establish total disability for the period beginning November 1, 2013 due to her accepted work-related injuries.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁷ For each period of disability claimed, the employee has the burden of proof to establish that she was disabled for work as a result of the accepted employment injury.⁸ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁹

Under FECA the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁰ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹¹ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning

⁷ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁸ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

⁹ See *Edward H. Horton*, 41 ECAB 301 (1989).

¹⁰ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

¹¹ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

capacity.¹² When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.¹³

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁴

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud.¹⁵ It is well established that, once OWCP accepts the claim, it has the burden of justifying the termination or modification of compensation benefits.¹⁶ OWCP's burden of justifying termination or modification of compensation holds true where it later decides that it has erroneously accepted a claim of compensation. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of its rationale for rescission.¹⁷

ANALYSIS

OWCP accepted the claim for acute lumbar strain. By decision dated May 29, 2014, it denied appellant's claim for wage-loss compensation for the period November 1, 2013 to April 25, 2014 based on the second opinion report of Dr. Zamani. The hearing representative affirmed the May 29, 2014 decision on April 27, 2015. The issue on appeal is whether appellant has met her burden of proof to establish disability for the period November 1, 2013 to April 25, 2014. The Board finds that appellant has failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted acute lumbar strain.

¹² *Merle J. Marceau*, 53 ECAB 197 (2001).

¹³ *Albert C. Brown*, 52 ECAB 152 (2000); *Barry C. Peterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁴ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁵ *L.C.*, 58 ECAB 493 (2007).

¹⁶ *Andrew Wolfgang-Masters*, 56 ECAB 411 (2005).

¹⁷ *See Amelia S. Jefferson*, *supra* note 7; *Delphia Y. Jackson*, 55 ECAB 373 (2004).

The Board finds that the opinion of Dr. Zamani, an OWCP referral physician, represents the weight of the medical evidence on whether appellant was disabled beginning November 1, 2013 due to her accepted acute lumbar strain. In his May 7, 2014 report, Dr. Zamani diagnosed a minor sprain, which he opined had completely resolved. He found an essentially normal orthopedic examination based on examination findings of full mobility and muscle strength, no lumbar spasm or tightness, and no tenderness over the thoracic region. Dr. Zamani concluded that she had no residuals from the accepted employment injury and was capable of performing full-duty work with no restrictions. His opinion, which is based on a complete and accurate medical background and supported by rationale, constitutes the weight of the medical opinion evidence and establishes that appellant's disability beginning November 1, 2013 was not due to her accepted July 14, 2003 employment injury.

Appellant relies upon the medical opinions of Dr. Arvanaghi to establish that her disability from work during the claimed period was due to her accepted July 14, 2003 employment injury. In several reports, Dr. Arvanaghi found that appellant had myofascial pain, thoracic/lumbar radiculopathy, a broken coccyx, lumbar radicular pain, and facet hypertrophy. He reported that appellant had been cleared to return to modified work in June 2013, but no work had been available within her restrictions. Dr. Arvanaghi opined in reports dated November 19, 2013 and February 11, 2014 that appellant was disabled from performing a letter carrier position, but was capable of performing sedentary work with restrictions. In his June 24, 2014 report, he opined that appellant was capable of working limited duty with restrictions of no standing more than 20 minutes at one time and no standing more than 2 hours total in a 24-hour period. Dr. Arvanaghi attributed the work restrictions to her accepted employment injuries. OWCP has not, however, accepted the currently diagnosed conditions of myofascial pain, thoracic/lumbar radiculopathy, a broken coccyx, lumbar radicular pain, and facet hypertrophy as causally related to the July 14, 2003 employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁸ As previously noted, OWCP has only accepted an acute lumbar strain in this case. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relationship.¹⁹ None of the reports from Dr. Arvanaghi contain rationale explaining how these conditions had been caused or aggravated by the accepted July 14, 2003 employment injury. Thus, the reports are insufficient to establish appellant's claim.

The Board finds that Dr. Zamani's opinion that appellant was not totally disabled from work represents the weight of the medical evidence and the additional medical evidence submitted is insufficient to create a conflict in opinion regarding whether she had any total

¹⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁹ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

disability for the period November 1, 2013 to April 25, 2014 causally related to the accepted July 14, 2003 employment injury.²⁰

On appeal counsel argues that appellant established a recurrence claim as the employing establishment failed to provide her with a limited-duty job within her work restrictions. While the employing establishment was unable to offer appellant work within the restrictions noted by Dr. Arvanaghi, appellant failed to establish that her medical restrictions were due to the July 14, 2003 employment injury. The Board has found that, when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA.²¹ In addition, the Board notes that Dr. Arvanaghi did not find appellant totally disabled from work, but rather that she required work restrictions.

CONCLUSION

The Board finds that appellant has not established total disability for the period November 1, 2013 to April 25, 2014 due to her accepted July 14, 2003 employment injury.

²⁰ In a March 19, 2014 decision, OWCP notified appellant that the claim for recurrence of disability effective November 1, 2013 had been accepted. Appellant filed claims for wage-loss compensation (Form CA-7) for the period November 1, 2013 through April 25, 2014. To the extent that the May 29, 2014 OWCP decision denying appellant's claims for disability compensation for that period could be considered a rescission of the acceptance of appellant's November 1, 2013 recurrence claim, the Board finds that OWCP met its burden of proof to rescind its acceptance based on the second opinion evaluation of Dr. Zamani. As discussed above, OWCP properly found that Dr. Zamani's opinion constituted the weight of the medical opinion evidence as to appellant's disability for the period November 1, 2013 to April 25, 2014. The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under 5 U.S.C. § 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision. The power to annul an award, however, is not an arbitrary one and an award for compensation can only be set aside in the manner provided by the compensation statute. *See Stephen N. Elliott, 53 ECAB 659 (2002).*

²¹ *A.M.*, Docket No. 09-1895 (issued April 23, 2010).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 27, 2015 is affirmed.

Issued: September 6, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board